IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3709 of 2005
With
CIVIL APPLICATION No. 12490 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO. LTD - Appellant(s)
Versus
ROSHANBEN FATEHMAHMED PARASHARWIDOW OF THE DECEASED & 5 - Defendant(s)

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Appearance :
MR KK NAIR for Appellant(s) : 1,
MR PANKAJ R DESAI for Defendant(s) : 1 - 5.
RULE UNSERVED for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/02/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal at the instance of the Insurance Company is directed against the judgment and award dated 8.8.2005 of the Motor Accident Claims Tribunal (Aux.) Rajkot in MAC Petition No.2320 of 2000 for reducing the amount of compensation.

2. Fatehmohammed Mimanji Parashar died at the age of 29 years in a motor vehicle accident which took place on 6.11.2000. When the deceased had parked his scooter on the road from Chandrapur to Vankaner and was repairing his scooter, the tanker insured by the appellant-Insurance Company ran over the deceased. The widow, two minor children and parents of the deceased, filed the claim petition for compensation of Rs.5 lakhs.

3. After holding that the accident was caused by the negligence of the tanker driver, the Tribunal assessed the income of the deceased at Rs.3,000/- per month, but deducted only one-sixth amount as the personal expenses of the deceased and determined the dependency benefit at Rs.2500/- per month i.e. Rs.30,000/- per annum. Adopting the multiplier of 15 years, the Tribunal computed compensation for loss of dependency benefit at Rs.4,50,000/-. Awarding Rs.1 lakh as the conventional amount for loss to the estate and Rs.20,000/- for pain, shock and suffering

undergone by the deceased before his death; in all, total compensation of Rs.5,70,000/- came to be awarded with interest at the rate of 9% per annum.

4. Mr Nair, learned advocate for the appellant-Insurance Company has assailed the award mainly on the ground that the Tribunal erred in deducting only one-sixth amount as the personal expenses of the deceased as against the usual deduction of one-third amount. The learned advocate has also vehemently challenged the award in so far as Rs.1 lakh is awarded as the conventional amount for loss to the estate and Rs.20,000/- is awarded for pain, shock and suffering undergone by the deceased for about five to six hours between the time of the accident and the death.

5. On the other hand, Mr Pankaj R Desai, learned advocate for the original claimants has supported the award and submitted that looking to the young age of the deceased, the multiplier adopted by the Tribunal is on the lower side and maximum multiplier of 18 years should be adopted.

6. Having heard the learned advocates for the parties, we find that in the facts and circumstances of the case and particularly the fact that the deceased was a young man aged 29 years and was cultivating agricultural lands, the Tribunal was justified in assessing the monthly income of the deceased at Rs.3,000/-. We do, however, find

considerable substance in the submission of Mr Nair for the Insurance Company that the Tribunal erred in deducting only one-sixth amount as the personal expenses of the deceased. The family consisted of the parents, widow and two minor children of the deceased. It is only when the number of dependents is very large that the deduction for personal expenses of the deceased should be less than one-third. In the facts and circumstances of the case, therefore, we hold that out of the monthly income of Rs.3,000/-, the deceased would have spent about Rs.1,000/- on himself and, therefore, Rs.2,000/- should be taken as the loss of dependency benefit to the claimants every month i.e. Rs.24,000/- per annum.

7. At the same time, we also find some substance in the submission of Mr Desai for the claimants that the multiplier adopted by the Tribunal is slightly on the lower side. The maximum multiplier of 18 is to be adopted in case of a bread-winner in the age group of 21 to 25 as per the decisions of the Apex Court. Hence, considering that the deceased was 29 years on the date of the accident, adopting the multiplier of 17 years would be reasonable. The compensation for loss of dependency benefit will, therefore, work out to Rs.24,000 X 17 = Rs.4,08,000/-.

8. As regards the conventional amount awarded by the Tribunal for loss to the estate, the sum awarded by the Tribunal is obviously excessive and as

per our recent decision dated 30.11.2006 in First Appeal No. 1069 of 2006, we reduce the said amount to Rs.25,000/-. We also award Rs.15,000/- for loss of consortium and Rs.5,000/- for funeral expenses.

9. As regards compensation under the head of pain, shock and suffering undergone by the deceased before his death, we find that the deceased had survived for only about five to six hours. Therefore, the amount to be awarded under this head would be Rs.5,000/-.

10. Accordingly, the claimants are entitled to get compensation under the following heads :-

Rs.4,08,000/-	for loss of dependency benefit;
Rs. 25,000/-	for loss to the estate;
Rs. 15,000/-	for loss of consortium;
Rs. 5,000/-	for pain, shock and suffering undergone by the deceased
Rs. 5,000/-	for funeral expenses
Rs.4,58,000/-	Total

11. We accordingly modify the award of the Tribunal by reducing the amount of compensation from Rs.5,70,000/- to Rs.4,58,000/ with proportionate costs and interest at the rate of 9% per annum from the date of the claim petition till the date of deposit.

12. In view of the statement made by Mr Nair for the appellant-Insurance Company that the award amount was deposited in compliance with the order dated 16.12.2005 on the stay application, we direct that the amount in excess of the amount payable under this judgment shall be refunded to the Insurance Company within one month from the date of receipt of the writ of this Court.

13. After refunding the excess amount as aforesaid, the Tribunal shall apportion the amounts payable to the claimants in the ratio of 40:20:20:10:10 in favour of the widow, minor son, minor daughter, mother and father of the deceased respectively and shall invest the entire amount payable to the minors in fixed deposits with a nationalized bank for a period of five years. Out of the amounts payable to the widow and parents of the deceased, in the facts and circumstances of the case, particularly the statement being made on behalf of the original claimants that the claimants require fund for purchasing a tractor for carrying on the agricultural operations on the land belonging to the family, 70% amount shall be invested in fixed deposits with a nationalized bank for a period of five years. The investments shall be made in several fixed deposits with a nationalized bank near the residence of the claimants with the usual conditions about prohibition against premature encashment of/ encumbrance over the deposits, with permission to the

claimants to withdraw the interest periodically accruing on such fixed deposits and with a direction to the Bank that the bank accounts of the claimants shall not be permitted to be operated by any power of attorney holder who is not a close relative of the claimants.

The rest of the amounts shall be disbursed to the widow and parents of the deceased by account payee cheques after proper verification and after informing them about the amounts being invested/disbursed and the terms and conditions of investment.

14. The appeal accordingly stands disposed of.

15. Since the appeal is disposed of, the civil application for stay also accordingly stands disposed of.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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